



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 12, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0663

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 5. Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer	Not Sustained (Lawful and Proper)

*This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.*

### **EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employee violated SPD policy when he used deadly force.

### **SUMMARY OF INVESTIGATION:**

The Complainant, who was not involved in this incident or present at the scene, filed an OPA complaint based on what he observed in media reports after the fact. He alleged that the use of deadly force by Named Employee #1 (NE#1) during this incident violated policy. The Complainant specifically pointed to NE#1's decision to fire at the "unarmed" subject who was running away at the time, and his handling of his firearm with one hand as he fired into a "dense neighborhood." As a result, OPA commenced this investigation.

OPA's investigation included reviewing Body Worn Video (BWV), In-Car Video (ICV), and third-party video, which all captured the incident. OPA also reviewed the documentation of the incident and the contents of the investigation conducted by SPD's Force Investigation Team (FIT). Lastly, OPA interviewed NE#1.

#### **A. Incident and Use of Deadly Force**

On October 15, 2020, NE#1 responded to a call of an individual brandishing a hammer. The individual – who was later identified as the subject in this case – was doing so while riding his bicycle and saying: "Black hate matters." The subject was not arrested at that time, and the hammer was not located.

Later that day, 911 callers reported an individual who had a large stick that was on fire. He was reported to be in the vicinity of a downtown Seattle park that contains multiple tents. NE#1 again responded. He observed the subject walking through an alley towards the park. There were buildings on both sides of the alley. The building to NE#1's left had brick walls and no windows. The subject was holding the flaming stick. NE#1 pulled behind him in his patrol



vehicle while driving slowly. NE#1 gave the subject two orders to stop. The subject did not do so and continued to walk forward towards the park and the tents therein. NE#1 kept driving slowly behind the subject.

At that point, the subject suddenly turned around and began running towards the patrol vehicle with the flaming stick outstretched. The subject jammed the stick into the patrol vehicle and directly towards NE#1. The stick caused the interior of the patrol vehicle to ignite and the flames caused burns to NE#1. NE#1 fired his handgun several times at the subject. The subject turned and began running away down the alley. NE#1 fired several more times. The subject was lost from sight as he turned the corner around a building.

By analyzing the video using AMPED5 software, OPA was able to identify seven shots that were fired by NE#1 within just under three seconds.

NE#1 was able to get out of the car as it continued to burn. Other officers located the subject shortly thereafter in a garage and placed him under arrest. It was determined that the subject was not struck by any of the shots fired by NE#1. Both NE#1 and the subject received medical treatment after the incident. The subject did not make an allegation of excessive force or other misconduct on NE#1's part.

#### **B. FIT Investigation and FRB Review**

FIT responded to the scene shortly after the shooting and took over the administrative investigation into the incident. This involved documenting and photographing evidence, coordinating with CSI, performing a round count and walkthroughs, and interviewing NE#1. OPA and the Office of Inspector General for Public Safety were present for the entirety of FIT's investigation. After it finished assessing the incident, FIT did not identify any actions that violated policy or the law.

After FIT's investigation concluded, SPD's Force Review Board (FRB) also reviewed the case. The FRB was not permitted to reach ultimate findings as to whether the use of deadly force was consistent with policy as the issue was under active OPA investigation. However, the FRB did not identify any tactical or training violations.

#### **C. OPA Investigation**

As discussed above, during its investigation, OPA reviewed video and documentation, investigation files, and interviewed NE#1.

NE#1 stated that he initially began to follow the subject in his patrol vehicle when he observed the subject holding a large flaming stick and walking towards an encampment in a park. He noted that the encampment had multiple tents in close proximity to each other and he believed that the tents were flammable. Given this and because of the high number of people generally in the area, NE#1 was very concerned for the safety of others. He thus decided to make verbal contact with the subject. He announced himself as a police officer and told the subject to stop. The subject did not do so, and NE#1 continued to follow him while remaining in the patrol vehicle.

NE#1 said that he made the decision to use his firearm when the subject advanced towards him with a flaming stick, tried to "impale" him with it, and lit the patrol vehicle on fire. NE#1 believed that the subject's actions constituted a threat of imminent serious bodily harm or death, which warranted the use of deadly force. He did not recall how many shots he fired. NE#1 stated that he stopped firing when he could no longer see the subject because the subject



had run off. NE#1 described that he re-assessed the threat once the subject disappeared around the corner of a building and he could no longer see him.

NE#1 provided his rationale for using deadly force on the fleeing subject. He articulated that he met all three of the requirements set forth in SPD policy.

First, he stated that the subject had committed a felony involving the infliction of serious bodily injury or death. He said that this occurred when the subject jammed the flaming stick into the patrol vehicle.

Second, he believed that, if allowed to escape and if not apprehended without delay, the subject could pose a threat of serious bodily harm or death to community members or other officers. With regard to this requirement, NE#1 noted that, earlier that day, he developed probable cause to arrest the subject for threatening other community members with a hammer while yelling: "Black hate matters." NE#1 further learned that the subject swung the hammer at the community members' heads while riding towards them on a bicycle. NE#1 felt that this demonstrated a willingness on the subject's part to cause serious bodily harm or death to others. Moreover, NE#1 asserted that, when coupled with the subject's actions towards him, he believed that there was more than a sufficient basis to conclude that the subject continued to present a threat and needed to be apprehended. This was especially the case as NE#1 did not see the hammer and did not know where it was and whether the subject still possessed it.

Third, he said that he told the subject to stop at least two times prior to the subject turning around and charging him with the flaming stick.

With regard to his handling of his firearm, NE#1 said that he previously qualified to shoot with one hand and was up to date with his firearm qualifications. He noted that he fired with one hand, in part, because he was trying to continue to steer the patrol vehicle with his other hand. He denied that, in doing so, he used his firearm in a manner that was unsafe or out of control. He further stated that he was aware of his backdrop when he fired, which was a brick wall with no windows. He knew that the rounds he fired would not have penetrated the brick. He indicated that, had his backdrop been different, he would have re-assessed whether it was safe and appropriate to fire.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***8.200 - Using Force 5. Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer***

SPD Policy 8.200-POL-4 governs the use of deadly force by SPD employees. It states that: "Deadly force may only be used in circumstances where threat of deadly or serious physical injury to the officer or others is imminent." The policy defines an imminent danger as when an objectively reasonable officer believes that: (1) "A suspect is acting or threatening to cause death or serious physical injury to the officer or others"; (2) "The suspect has the means or instrumentalities to do so"; and (3) "The suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury." (SPD Policy 8.200-POL-4.) Deadly force must also be reasonable, necessary, and proportional as defined under SPD Policy 8.200-POL-1.



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SPD Policy 8.200-POL-5 specifically discusses the use of deadly force on a fleeing individual. For such force to be permissible, an objectively reasonable officer must believe that such force is necessary, as well as that there is probable cause to establish the following: (1) “The suspect has committed or is in the process of committing a felony involving the infliction or threatened infliction of serious physical injury or death”; (2) “The escape of the suspect would pose an imminent danger of death or serious physical injury to the officer or to another person unless the suspect is apprehended without delay”; and (3) “The officer has given a verbal warning to the suspect, if time, safety, and circumstances permit.”

When assessing the totality of the circumstances, OPA finds it clear that, at the time deadly force was used, the subject was acting in a manner purposed to cause serious bodily injury or death to NE#1, that he had the means to do so via the flaming stick, and that he had the opportunity to use those means and actually did so. Moreover, OPA finds that the use of deadly force was reasonable, necessary, and proportional under the facts of this case.

The Complainant does not appear to contest this in his complaint, but instead focuses on the shots fired as the subject began running away, as well as the manner in which the shots were fired by NE#1. As discussed above, an officer must meet separate additional criteria to justify using deadly force towards a fleeing subject. Ultimately, OPA finds that these criteria were met by NE#1 here.

First, it is undisputed that, at the time the shots were fired, the subject had committed a felony involving the infliction of serious bodily harm or death. Second, OPA finds that, based on what NE#1 knew and had experienced that day, he reasonably believed that the subject posed an ongoing imminent danger to others. Most notably, NE#1 was aware that the subject had twice attempted and used potentially deadly violence – initially by using a hammer and subsequently by brandishing and using the flaming stick. NE#1 knew that, on both occasions, the subject’s primary focus was community members within the park and that these individuals remained vulnerable. Moreover, as NE#1 articulated, he did not see the subject’s hammer at the time, and it was possible that he still possessed it and could use it to harm or kill someone. Given this, OPA concludes that NE#1 reasonably believed that he could not allow the subject to escape. Third, NE#1 did provide warnings to the subject; however, at the time the subject fled, additional warnings simply were not feasible given all of the circumstances, including that NE#1 was actively being burned and his patrol vehicle was on fire.

Lastly, OPA concludes that NE#1 did not violate his training or policy by firing with one hand or because of the direction of his shots. NE#1 was trained and qualified to shoot with one hand. In addition, OPA agrees with NE#1 that his backdrop was the brick wall of a building, not a populated area.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**